

5/20/96

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Implementation)
of Substitute Senate Bill 306 or) Case No. 96-532 -TP-UNC
Substitute House Bill 734 of the)
121st General Assembly)

SETTLEMENT AGREEMENT

The parties to this agreement are The Public Utilities Commission of Ohio (the "Commission" or "PUCO"), The Staff of the Public Utilities Commission of Ohio ("Staff"), Ameritech Ohio¹, Time Warner AxS of Ohio, L.P. and Time Warner Communications of Ohio, L.P. ("Time Warner"), The Office of the Ohio Consumers' Counsel ("OCC"), AT&T Communications of Ohio, Inc. ("AT&T"), Sprint Communications Company L.P. ("Sprint"), MCI Telecommunications Corporation ("MCI"), and the Ohio Cable Telecommunications Association ("OCTA").

I. Recitals

A. In entering into this agreement, it is the intention of the parties to amicably resolve several contested issues before the Commission in order to avoid further litigation.

¹ Ameritech Ohio is a registered trade name for The Ohio Bell Telephone Company, which company is referred to in Exhibit A to this agreement and, as used herein, the terms are synonymous.

B. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

C. The undersigned hereby stipulate and agree and each further represents that it is authorized to enter into this agreement.

D. As used in this agreement, the terms "plan of alternative regulation" or "plan" refer to the plan of alternative regulation approved and adopted in PUCO Case Nos. 93-487-TP-ALT and 93-576-TP-CSS and described in Section 3 of Exhibit A.

E. As used in this agreement, the term "draft legislation" shall mean the draft legislation attached hereto as Exhibit A without amendment unless such amendment is approved in writing by all the parties hereto.

II. Legislation and Regulatory Matters

In consideration of the mutual promises contained herein, the parties agree as follows:

A. The parties represent and agree that the draft legislation is reasonable and appropriate and that they will make all reasonable efforts to support the enactment of the draft legislation. The parties further agree not to challenge the lawfulness of the draft legislation, once enacted, in any

proceeding before the Commission, the Ohio Supreme Court, or any other court, agency, or tribunal. It is the intent of the parties to secure the benefits of this agreement regardless of any unexpected action taken by the General Assembly. In the event that attempts by nonparties are made during the enactment process to modify the draft legislation through amendment, substitute legislation or other mechanism, then in such event, the parties shall jointly oppose the amendment, substitute legislation or other mechanism, and the draft legislation, if modified.

B. All of the following obligations in this Section II are expressly contingent upon and subject to the enactment of the draft legislation on or before June 30, 1996. Upon enactment of the draft legislation, the respective parties will perform the duties, obligations, and acts set out in, and in the manner provided by, this agreement.

1. Ameritech Ohio and Time Warner agree to withdraw their respective applications for rehearing, filed April 19, 1996, in PUCO Case No. 96-66-TP-CSS, and Time Warner agrees not to seek or support rehearing of any order establishing an interim interconnection arrangement as provided for in Exhibit A.

2. AT&T shall withdraw its April 1, 1996 objections and its May 6, 1996 supplemental objections and request for

clarification (but not its memorandum contra to Ameritech Ohio's motion for a protective order) in PUCO Case Nos. 93-487-TP-ALT and 93-576-TP-CSS and in the several cases designated in those filings. Additionally, AT&T agrees that it will not seek rehearing of the Commission's Finding and Order in PUCO Case Nos. 96-308-TP-AEC, 96-309-TP-AEC, and 96-411-TP-ATA.

3. Time Warner shall withdraw its Motion for Record Conference filed on April 30, 1996, in PUCO Case Nos. 93-487-TP-ALT and 93-576-TP-CSS.

4. Ameritech Ohio shall timely file tariffs which reduce to zero (\$0.00) for the term of the plan of alternative regulation the intrastate carrier common line rate effective September 1, 1996. The Commission shall approve such tariff filing to be effective no later than September 1, 1996.

5. AT&T, MCI, and Sprint shall flow through to their respective intrastate end user customers all of the access charge rate reductions resulting from the action taken by Ameritech Ohio in paragraph II.B.4. AT&T, MCI, and Sprint shall provide the documentation demonstrating compliance herewith as set forth in Exhibit B.

6. No later than October 1, 1996, Time Warner shall withdraw its complaint without prejudice in PUCO Case No. 96-66-

TP-CSS, provided that an interim interconnection arrangement becomes effective as contemplated in Section 4 of the draft legislation and provided that Ameritech Ohio does not seek or support rehearing or other administrative or judicial review of a final order specifying rates, terms, and conditions for such interim interconnection arrangement.

7. The Commission shall adjudicate the issues in the case entitled AT&T v. Ameritech Ohio, PUCO Case No. 96-336-TP-CSS, ("the AT&T case") no later than March 31, 1997. This agreement does not preclude any party from seeking to have the issues presented in the AT&T case addressed in an arbitration or in another proceeding, including a generic proceeding, provided that the issues in the AT&T case shall be adjudicated on or before March 31, 1997. Except as provided herein, this agreement does not preclude or diminish any defenses to such a proceeding. No party to this agreement shall assert or rely upon any provision of the plan of alternative regulation which purports to limit review of carrier access charges so as to preclude an adjustment to such charges in the AT&T case or in any other case, arbitration, or other proceeding. No party to this agreement shall raise as an issue or assert as an appropriate standard the amount of Ameritech Ohio's earnings or rate of return to determine the reasonableness of Ameritech Ohio's access charges in the AT&T case or in any other case. Ameritech Ohio shall not assert the need for revenue replacement, revenue neutrality, or

the attainment of a specific revenue requirement in any such proceeding.

8. Ameritech Ohio shall implement a plan to enhance the Universal Service Assistance (USA) program. Such plan shall provide for:

- Funding of USA program-specific publicity efforts in the amount of \$122,000 per year. Such amount, if allocated on a pro-rata basis, may be expended on publicity efforts that include other programs;
- A dedicated workgroup, funded separately by Ameritech Ohio, to determine customers' eligibility and to enroll them in the USA program (the parties acknowledge that members of this workgroup may serve on a rotational or other scheduled basis);
- An "800" toll free telephone number which will be displayed in all USA publicity materials which will provide customers with direct access to the dedicated USA workgroup;
- Within 90 days of the Commission's final order in Case No. 95-790-TP-COI, Ameritech Ohio and OCC shall meet with the USA Advisory Committee and negotiate in good faith the terms and conditions of payment arrangements for past due bills for USA applicants; and
- Ameritech Ohio and OCC shall explore, with the USA Advisory Committee, whether there are mutually agreeable

terms under which Call Waiting service can be made available to USA program participants.

9. Ameritech Ohio shall implement a plan relating to service improvement efforts that provides for:

- Subject to any necessary regulatory approval and beginning at the later of 60 days after enactment of the draft legislation or the receipt of such regulatory approval, which approval shall be sought within ten days of the enactment of the draft legislation, offering to loan a single cellular telephone to single line residential customers, or multi-line residential customers if all their lines are out of service, within Ameritech Ohio's service area if, when notified by the customer of an out-of-service condition, Ameritech Ohio expects that it will not be able to repair the customer's service for 72 hours or more (Ameritech Ohio shall provide free delivery and pick-up of the loaned cellular telephone and shall provide customers receiving such cellular telephones local calling and call forwarding at no charge);
- The application of a credit of \$20.00 to (1) those customers to whom such a cellular telephone was offered but not accepted, and (2) those customers who are otherwise out of service 72 hours or more and to whom a loaner cellular telephone was not offered. Ameritech Ohio shall begin paying the credits under the former circumstance upon

implementation of the cellular telephone loaner program and under the latter circumstance within 30 days of enactment of the draft legislation;

- Through the mechanism of the executive meetings provided for in the Stipulation and Recommendation in Case No. 95-711-TP-COI, the Commission Staff, OCC, and Ameritech Ohio shall meet, discuss, and attempt to identify the causes of missed repair commitments and installation appointments and solutions thereto; and
- For those premises installation appointments missed by Ameritech Ohio in an exchange in which it has failed to meet the Minimum Telephone Service Standards for premises installation appointments met in that month, Ameritech Ohio shall apply a credit of \$15.00 to each affected customer.

Notwithstanding anything to the contrary contained in this section II.B.9, if any out-of-service condition is caused by flood, tornado, blizzard, or other extreme weather condition or other acts of God, or strikes, boycotts, concerted labor action, national or local disaster, acts of third parties (such as cable cuts and other damage to outside plant facilities), then in such event, the provisions of this section relating to loaner cellular telephones and credits will be of no effect for any impacted area. At OCC's request, Ameritech Ohio will provide the documentation necessary to demonstrate Ameritech Ohio's compliance with this section II.B.9. If any necessary regulatory approval for the loaner cellular telephone program imposes

conditions on such program not contemplated by the parties, Ameritech Ohio shall have a reasonable period of additional time to implement the program.

10. The parties waive the right to, and will not, challenge or question, in any proceeding before the Commission, the Ohio Supreme Court, or any other court, agency, or tribunal the validity of the plan of alternative regulation as and from its effective date, January 9, 1995.

11. If Ameritech Ohio has fully complied with the terms of this agreement, which by their terms are to be completed on or before September 1, 1996, OCC shall move to dismiss its complaint in Case No. 93-576-TP-CSS with prejudice no later than September 10, 1996, such dismissal to be effective October 1, 1996.

12. Ameritech Ohio shall not assert or claim that its plan of alternative regulation operates as a bar to the application to Ameritech Ohio of the mandates of the Telecommunications Act of 1996 or the rules or policies to be adopted by the Commission in Case No. 95-845-TP-COI relating to the following matters:

Usage Subscription;

Local Exchange Service Certification;

Universal Service Funding;

Network Unbundling, the Availability and Provisioning
of Network Elements, and Resale of Components and
Services;
End Office Integration/Interconnection/Standards;
Number Assignment;
Number Portability; and
Compensation between Providers.

III. Other Terms and Conditions

- A. The recitals set out in Part I of this agreement constitute an integral part of the agreement.
- B. Except as otherwise provided herein, this agreement shall remain in effect until the end of the term of the plan of alternative regulation.
- C. Any party to this agreement is entitled to seek specific performance of any obligation under this agreement, and each party agrees that specific performance is the only adequate remedy under this agreement. The agreement shall be governed by the law of the State of Ohio.
- D. The parties will take all actions reasonably necessary to effectuate and carry out the purposes of this agreement.

E. The failure of any party to insist on the performance of any term or condition of this agreement or to exercise any right hereunder shall not be construed as a waiver of such term or condition or right.

F. If any provision of this agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this agreement and shall be replaced by a valid and enforceable provision which so far as possible achieves the same economic and other benefits for the parties as the severed provision was intended to achieve, and the remaining provisions of this agreement shall continue in full force and effect.

G. The terms contained in this agreement constitute the entire agreement among the parties and there are no other agreements or writings except those referred to therein. This agreement may not be modified except by a writing signed by all parties.

H. This agreement should not be understood to necessarily reflect the positions which the parties would have taken if all of the matters referred to herein were litigated to conclusion. Except as provided herein, this agreement shall not prejudice any of the positions taken by any of the parties on any issue before the Commission or any other forum, and it shall not constitute an admission of fact by any of the parties. No provision of this agreement is to be relied upon in any manner in any proceeding

before the Commission or any other forum, except to enforce and give effect to the terms of this agreement.

I. This agreement shall be effective upon its execution by all parties as of May 14, 1996.

J. This agreement may be signed in counterparts.

Executed this 20th day of May, 1996.


for The Public Utilities Commission of Ohio



for The Staff of the Public Utilities Commission of Ohio



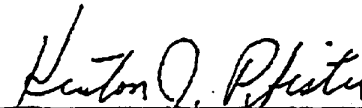
for Ameritech Ohio



for Time Warner Axs of Ohio, L.P. and
Time Warner Communications of Ohio, L.P.



for The Office of the Ohio Consumers' Counsel



for AT&T Communications of Ohio, Inc.



for Sprint Communications Company L.P.



for MCI Telecommunications Corporation

for the Ohio Cable Telecommunications
Association

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Ohio)
Bell Telephone Company for Approval of) Case No. 93-487-TP-ALT
an Alternative Form of Regulation.)

OPINION AND ORDER

The Commission, considering the motion, the evidence of record, the arguments of the parties, the applicable law, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Mr. Michael T. Mulcahy, Ameritech Ohio, 45 Erieview Plaza, Suite 1400, Cleveland, Ohio 44114, on behalf of Ameritech Ohio.¹

Mr. Robert S. Tongren, Ohio Consumers' Counsel, by Barry Cohen and Ann M. Hotz, Associate Consumers' Counsel, 77 South High Street, 15th Floor, Columbus, Ohio 43266-0550, on behalf of the residential customers of Ameritech Ohio.

Mr. Ellis Jacobs, Legal Aid Society of Dayton, 333 West First Street, Suite 500, Dayton, Ohio 45402, on behalf of the Edgemont Neighborhood Coalition.

Mr. Michael R. Smalz, Ohio State Legal Services Association, State Support Unit, 861 North High Street, Columbus, Ohio 43215, on behalf of the Appalachian People's Action Coalition.

Mr. Joseph Meissner, Empowerment Center of Greater Cleveland, 1223 West 6th Street, Cleveland, Ohio 44113, on behalf of the Empowerment Center of Greater Cleveland.

Ms. Betty D. Montgomery, Attorney General of the State of Ohio, Duane W. Luckey, Chief of the Public Utilities Section, by Steve Nourse and Tanisha Lyon Brown, Assistant Attorneys General, 180 East Broad Street, 7th Floor, Columbus, Ohio 43266-0573, on behalf of the staff of the Public Utilities Commission of Ohio.

Mr. Kerry Bruce, Department of Public Utilities of the City of Toledo, 420 Madison Avenue, Suite 100, Toledo, Ohio 43604-1219, on behalf of the City of Toledo.

Mr. Bruce J. Weston, 169 West Hubbard Avenue, Columbus, Ohio 43215-1439, on behalf of the American Association of Retired Persons.

¹ Ameritech Ohio was formerly known as The Ohio Bell Telephone Company.

OPINION:

I. Background

By Opinion and Order issued on November 23, 1994, in this docket, the Commission approved a stipulation and the attached alternative regulation plan for Ameritech Ohio (Ameritech). One of the commitments adopted as part of the alternative regulation plan was the establishment of a universal service assistance (USA) program to provide discounts and other benefits to low-income persons meeting certain eligibility criteria. The Commission's November 23, 1994 Opinion and Order was overturned by the Ohio Supreme Court on grounds unrelated to the USA program in *Time Warner AxS v. Pub. Util. Comm.* (1996), 75 Ohio St. 3d 299, but then reinstated by adoption of Sub. S.B. 306, effective on June 18, 1996. As part of the settlement agreement that led to this reinstatement, certain enhancements to the USA program were agreed to by Ameritech in Case No. 96-532-TP-UNC, *In the Matter of the Implementation of Substitute Senate Bill 306 or Substitute House Bill 734 of the 121st General Assembly*.

On September 4, 1997, the Edgemont Neighborhood Coalition (Edgemont), the Empowerment Center of Greater Cleveland (Empowerment), the Ohio Consumers' Counsel (OCC), the American Association of Retired Persons (AARP), the city of Toledo (Toledo), and the Appalachian People's Action Coalition (APAC) jointly filed a motion requesting that the Commission require Ameritech to show cause why it should not be found to be in violation with the terms of its alternative regulation plan. The joint movants alleged that Ameritech has failed to comply with the terms of the commitment, as modified, that relate to the USA program. Additionally, the joint movants requested that the Commission:

- (1) direct Ameritech to comply with its alternative regulation plan;
- (2) direct Ameritech to fully implement the revisions suggested by the joint movants;
- (3) require Ameritech to make proper restitution and compensation;
- (4) conclude that it would not be in the best interest for Ameritech to provide in-region, interLATA services;
- (5) find that Ameritech has violated a Commission order and is providing inadequate service; and
- (6) prohibit Ameritech from declaring any cash, stock, bond, or script dividends until Ameritech implements the USA portion of its alternative regulation plan.

On September 22, 1997, Ameritech filed a memorandum contra the joint movants' motion. By entry dated October 6, 1997, the attorney examiner concluded that a revocation hearing should be scheduled, at which Ameritech would be required

to establish that it is in compliance with its effective alternative regulation plan. The evidentiary hearing was scheduled to begin on November 12, 1997. A mediation session was also scheduled, and held, on October 21, 1997.

Additional mediation sessions were held on several occasions. APAC's request to intervene in this proceeding was granted on November 21, 1997. The evidentiary hearing was rescheduled three times, at the request of the parties. A local public hearing was scheduled and held in Cleveland, Ohio, on September 3, 1998. Thirteen people testified, some in support of Ameritech's efforts with the USA program and others critical of Ameritech's efforts.

The evidentiary hearing began on September 11, 1998. At the evidentiary hearing, Ameritech presented the testimony of four witnesses: Mr. Ed Norris, General Manager of the Customer Care Centers with Ameritech Corporation; Ms. Susan Murtha, Senior Manager in Specialty Channels with Ameritech Ohio; Ms. Sharon Glaspie, Director of External Relations with Ameritech Ohio; and Ms. Susan Drombetta, State Regulatory Advocate with Ameritech Ohio. OCC presented the testimony of two witnesses, namely, Ms. Nancy Brockway, now a Commissioner with the New Hampshire Public Utilities Commission, and Ms. Vicki Leach-Payne, Compliance Director at OCC. Empowerment presented the testimony of Mr. Stephen Wertheim, Executive Director of the Cuyahoga County Ombudsman office, and Mr. William Ondrey Gruber, then Assistant Director of Law for the City of Cleveland. The staff of the Commission participated as well and presented the testimony of Mr. Stephen Puican, now Chief of the Gas, Water, and Steam Division of the Utilities Department of the Commission. Initial, post-hearing briefs were filed on October 14, 1998 and reply briefs on October 23, 1998.

II. The Law

Ameritech is a telephone company as defined by Section 4905.03(A)(2), Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. Ameritech is subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

Ameritech's alternative regulation plan was filed pursuant to Section 4927.04, Revised Code, and the Commission's rules governing the alternative regulation of large local exchange companies. *In the Matter of the Commission's Promulgation of Rules for Establishment of Alternative Regulation of Large Local Exchange Telephone Companies*, Case No. 92-1149-TP-COI, Entry on Rehearing (March 10, 1993). Regarding the question of compliance, Ameritech's alternative regulation plan (at Section 28) states that, if the Commission believes that the Company has failed to materially comply with the terms of the plan, the Commission shall give the company notice, including a basis of such belief and a reasonable period of time to come into compliance. Moreover, included in the Commission's alternative regulation rules is Rule XI(E):

The Commission may not modify or revoke any order accepting a plan issued pursuant to Section 4927.04(A), Revised Code, unless it determines, after notice to the company and hearing, that the company has failed to comply with the terms of its plan. Prior to any such ruling, the Commission shall take into consideration consequences of such action on the company and its financial status as well as the impact on its customers and shall provide the company an opportunity to cure its noncompliance. The Commission shall also serve notice of such action upon all parties to the proceeding in which the plan was approved, or any person, not otherwise represented, who requests such notice.

III. Summary of the Evidence

A. USA Program and the Obligation as Set forth in the Plan and Subsequent Settlement

The USA program was instituted in April 1995 (Tr. II, 106, 117). At the present time, there are two plans under the USA program (Tr. I, 38, 51; OCC Ex. 25, at 3). Under plan 1, a participant receives a monthly credit of \$10.20 with residential service, but cannot subscribe to any optional services unless the participant has a medical reason documented by his/her doctor (Tr. I, 38, 140; Tr. II, 11; Tr. III, 118; OCC Ex. 25, at 3). Plan 2 is available only to new Ameritech customers (Tr. I, 207; Tr. II, 81; Tr. III, 211; OCC Ex. 25, at 3). Plan 2 participants can receive optional services, but the monthly discount is only \$5.25 (Tr. I, 38, 51, 141, 198; Tr. III, 211). Under both plans, deposits and installation fees are waived (OCC Ex. 25, at 3; OCC Ex. 30, at 4). If a customer receives the USA discounts, he cannot have a second access line (Tr. III, 180). Federal and state funds are available to Ameritech for part or all of the discounts given under the USA program (Tr. II, 97-98; Tr. III, 118, 185-186, 209-210, 218).

The obligation of Ameritech relative to the USA program is set forth in Ameritech's alternative regulation plan. The plan includes the following terms:

- (1) Receipt of assistance from at least one of seven programs will permit someone to be eligible for the USA program.
- (2) USA eligible services shall include Residence Flat Rate, Residence Message Rate, Residence Measured Rate, and Residence Minute Line services.
- (3) Reasonable payment arrangements for past due bills will be granted to USA eligible customers in order to allow them to enter the program.

- (4) No deposit is required.
- (5) An Advisory Committee will be established, comprised of company, consumers, and low-income representatives.² The Advisory Committee shall evaluate the success of the USA program and the number of eligible customers that participate. The committee shall provide advice to the company on such issues as:
 - (a) The development of pre- and post-shutoff payment arrangements;
 - (b) Promotional, educational, and training programs related to USA;
 - (c) Payment arrangement availability for customers whose telephone service relates to a medical problem;
 - (d) Adequate notice to non-flatrate customers as to the availability of flatrate services and whether the customer may be "better off" switching;
 - (e) Enrollment procedures; and
 - (f) A benchmark for evaluating the success of USA and its enrollment.

Plan at Exhibit G. Additionally, Ameritech agreed in June 1996 to several enhancements to the USA program. Those enhancements were:

- (1) Funding of USA program-specific publicity efforts in the amount of \$122,000 each year.
- (2) A dedicated workgroup, separately funded by Ameritech Ohio, to determine eligibility and to enroll customers in the program.
- (3) A toll free 800 number will be displayed on all USA publicity materials, providing direct access to the dedicated workgroup.

² The Commission staff also participated in the Advisory Committee, in an advisory capacity.

- (4) Ameritech, OCC, and the Advisory Committee will negotiate in good faith the terms and conditions of payment arrangements for past due bills for USA applicants within 90 days of the Commission's final order in Case No. 95-790-TP-COI, *In the Matter of the Commission Investigation Into the Disconnection of Basic Local Exchange Service for the Non-payment of Charges Associated with Services Other than Basic Local Exchange Service*.
- (5) Ameritech, OCC, and the Advisory Committee shall explore whether there are mutually agreeable terms under which Call Waiting Service can be made available to USA program participants.

Senate Bill 306, supra, settlement agreement at paragraph 8.

The joint movants allege that Ameritech has failed to properly implement the USA program. To substantiate their claim, they point to a number of things, which may be categorized as follows: publicity/customer education, the enrollment process, staffing and training, enrollment numbers and goals, payment arrangements, working with the advisory committee, and the addition of Call Waiting to plan 1. Ameritech counters, stating that it has undertaken appropriate actions to fully implement the USA program to which it committed. The evidence regarding each of these categories is summarized below.

B. Publicity/Customer Education

Ms. Glaspie was responsible for publicizing the USA program and developing the publicity materials (Ameritech Ex. 5, at 2; Tr. II, 141; Tr. III, 38). She had never put together a communications plan before (Tr. II, 172). Initially, Ameritech planned to use the same communications plan and brochure that were already in place from two other programs, namely, Telephone Service Assistance (TSA) and Service Connection Assistance (SCA) (Tr. II, 118, 193; Tr. III, 39).³ Ms. Glaspie presented those to the Advisory Committee in March 1995, which sought to rework them in order to disseminate more information to the low-income community (Tr. II, 122; Tr. III, 40; Tr. IV, 71, 73, 96-97, 152, 220; Tr. V, 19-20).⁴ The Advisory Committee grew concerned over the delay

³ Those communications plans included: putting information in the telephone directories, sending a mailing out one time per year, placing an ad in the newspaper, and doing a statewide mailing one time per year (Tr. III, 39-40). Eventually, the TSA and SCA communications plans were altered to follow the communications plan for the USA program (*Id.* at 40).

⁴ A fair amount of questioning was done during the hearing about whether Ameritech was required under the plan to publicize the USA program. The plan initially only stated that the Advisory Committee would advise on promotion of the program. Ameritech clearly anticipated publicizing the program because it intended, prior to the first Advisory Committee meeting, to follow a particular communications plan (Tr. II, 122). Ms. Glaspie stated that Ameritech was "going to do everything we could to get the word out on USA" (Tr. II, 194). The other committee members likewise expected

in providing information to social service agencies and, for that reason, Ameritech sent its press release and a "Q and A" in May 1995 (Tr. II, 122; OCC Ex. 27; Edgemont Ex. 6). A comprehensive communications plan and brochure were finalized, with the assistance of the Advisory Committee, several months after the program was implemented (Ameritech Ex. 5, at 4; Tr. II, 119, 122, 143; Tr. IV, 220). By June 1995, some members of the Advisory Committee were disappointed with Ameritech's publicity efforts and Ameritech was scrambling to publicize the program in order to meet committee expectations (OCC Ex. 27, at 3). From the approval of Ameritech's alternative regulation plan, it took Ameritech three months to develop a USA brochure and six months to finalize a brochure (OCC Ex. 30, at 7; Tr. V, 20).

Ms. Glaspie did not consult with any marketing experts at Ameritech in devising a communications plan for the USA program (Tr. II, 174). She did not know if Ameritech has any marketing experts, even though she worked on issues with the USA program with at least two people from a marketing department in the Ameritech family (Tr. II, 174-175; Tr. III, 49, 64; OCC Ex. 27, at 2). Instead, she used public relations firms to devise a number of publicity efforts (Tr. II, 126, 135, 174). Mr. Wertheim opined that the money for the public relations firms has had poor results (Empowerment Ex. 1, at 9; Tr. IV, 61-62).

Also, as arranged by the Advisory Committee, Ameritech entered into short-term contracts with several social service agencies, which would promote the USA program (Ameritech Ex. 5, at 9-10). The Advisory Committee essentially orchestrated this outreach by suggesting service providers, writing the request for proposal, reviewing the proposals, and making decisions on hiring and rehiring (Tr. IV, 82-83). Ameritech encountered problems with providing supplies to those entities providing outreach services (Tr. II, 134-135; Empowerment Ex. 1, at 10). Ameritech corrected this problem so that the printer gave the information directly to the shipper (Tr. IV, 85-86). Nevertheless, Mr. Wertheim claims that these supply problems affected the effectiveness of the outreach agencies because they were under very short contracts and delays in information resulted in lost publicity (Empowerment Ex. 1, at 10; Tr. IV, 64).

In October 1996, Ameritech agreed to advertise the program through fliers mailed to beneficiaries of Ohio Department of Human Services (ODHS) administered programs, after members of the Advisory Committee suggested it 16 months earlier and then arranged it (Tr. III, 17, 33; OCC Ex. 30, at 10-11). Originally, the mailing was to be to all 760,000 beneficiaries, but the number was decreased because Ameritech would not have been able to handle the resulting calls (Tr. III, 7, 9-10; Tr. IV, 192; Empowerment Ex. 3D at 4). The October 1996 mailing was sent to 60,000 recipients of aid to dependent children in Cuyahoga County (Tr. II, 231). Then, in November and December 1996, fliers were mailed also to those with medical cards; again, the initial

publicity for the USA program, but were interested in something more aggressive than what Ameritech originally planned (Tr. II, 194). Thus, while initially Ameritech's alternative regulation plan did not directly require publicity or certain publication efforts, the record indicates that all of the parties agree that publicity would be accomplished.

numbers were decreased in order to allow Ameritech to handle the resulting calls (*Id.*; Tr. III, 9-10; Empowerment Ex. 3C at 2). Similar mailings in April and September 1997 went to medical card recipients (Tr. II, 231-232). The number of mailings in April 1997 was also scaled back in order to allow Ameritech to handle the resulting calls (Tr. III, 11; Empowerment Ex. 4J at 3). A total of 560,000 mailings between October 1996 and September 1997 included USA information (Ameritech Ex. 5, at 13; Tr. III, 8).

Similarly, mailings to Home Energy Assistance Program (HEAP) benefit recipients included USA information, although it took 10 months from the time the idea was suggested by the Advisory Committee to actually occur (Tr. III, 18-19; OCC Ex. 30, at 10-11). Also, the Advisory Committee negotiated with ODHS to have Ameritech put telephones in ODHS buildings so that calls could be directly linked to the dedicated workgroup (Tr. III, 33-34). Originally, the Cleveland area lobbies contained such direct-line telephones, as a pilot (*Id.* at 34-35). The pilot was well received, but Ameritech has not installed such telephones in any of the other ODHS buildings (*Id.* at 35-36, 123). It is clear that Ameritech would not be able to install such direct-line telephones in all ODHS buildings in its service territory because of technical infeasibility (*Id.* at 35-36). However, Ameritech still has not installed these, 20 or so, other telephones in the ODHS buildings that do not have a technical problem (*Id.* at 35-36, 123).

Another communications plan was developed to coincide with the creation of the dedicated workgroup (described more fully below) in August 1996, but the revised brochure was not available until October 1996 (Ameritech Ex. 5, at 8; Tr. III, 44). Ms. Leach-Payne contends that the development of this brochure did not occur until February 1997, seven months after efforts began, because Ameritech changed positions on the subject of a mail-in application (OCC Ex. 30, at 8-9). However, other publicity materials were available while the brochure was being reworked (Tr. V, 20-21).

Ms. Glaspie acknowledges that the Advisory Committee was active in modifying the latest brochure and other advertising efforts, in getting the ODHS to include USA information in its mailings, and in developing the outreach programs (Ameritech Ex. 5, at 11-12; Tr. III, 17-18). Also, Advisory Committee members gave other mailing list information (Ameritech Ex. 5, at 12).

Ms. Glaspie's prefiled testimony includes a list of the publicity efforts between 1995 and 1997 (Ameritech Ex. 5, at 4-7 and 8-11). The most effective publicity effort was the direct mailings (Tr. III, 42). With the establishment of the dedicated workgroup, Ameritech could determine response rates to its publicity efforts (*Id.* at 38, 56). In fact, 70,000 people called about the program between September and December 1996 and by the end of 1997, over 200,000 people had called (*Id.* at 27). Mr. Wertheim states that, in 1998, there has been little publicity about the program and no one is conducting outreach (Empowerment Ex. 1, at 8-9; Tr. IV, 59). He could not say if that decline has affected enrollment (Tr. IV, 113).

Ms. Glaspie states that Ameritech has complied with funding the publicity efforts in the amount of \$122,000 each year since the 1996 settlement (Ameritech Ex. 5, at 8). It is Ameritech's position that it is not required to do any publicity or marketing beyond the \$122,000 allocation (Tr. II, 227-228). Publicity items, such as printing materials, advertising, and contracts with social service agencies, were attributable to this allotment (Tr. III, 24). However, Ameritech employee time was not attributable to the allotment (*Id.*). The Advisory Committee and Ameritech have worked to agree upon what publicity efforts would be attributable to the allotment (*Id.*).

Ms. Brockway states that the biggest barrier to participation in a low-income assistance program is lack of knowledge (OCC Ex. 25, at 13). Beyond that already noted, the movants are critical of Ameritech's publicity of the program on two other points. They contend that the Ameritech resisted targeted mailings to low-income households (OCC Ex. 30, at 9-12). Furthermore, when the toll free 800 numbers were established, they were not publicized because the new brochure was delayed (Tr. II, 20-21).

C. The Enrollment Process

In the beginning of the USA program, Ameritech personnel would both enroll customers in the USA program and establish service (Ameritech Ex. 2, at 2). The Ameritech personnel had some difficulties with enrolling customers in April and May 1995 (Tr. V, 24; Empowerment Exs. 2F at 2 and 2H at 2). Additionally, prior to actually being enrolled in the USA program, enrollees were required to send Ameritech documentation to demonstrate their participation in one of the underlying eligibility programs (Ameritech Ex. 2, at 4). This process was the same as what Ameritech used for the TSA and SCA programs (Tr. III, 39). There does not appear to have been a script for the Ameritech personnel to follow at the outset of the program, but that is often the case (Tr. II, 15-17). In the beginning of the program, if the USA customer had an outstanding bill, he was given a telephone number to call the collections department (OCC Ex. 30, at 22; Tr. V, 52). No "warm transfer"⁵ occurred (*Id.*). The Advisory Committee asked if transfers could be made so that the collection department knew that the caller was a USA customer and the appropriate payment arrangements would be offered (OCC Ex. 30, at 22). That began to occur in January 1996 (*Id.* at 23).

By April 1995, the Advisory Committee raised the question of whether a written application form would be used for enrollment in addition to enrollment over the telephone (Tr. II, 213-214; Empowerment Ex. 2H at 2). Most of the Advisory Committee members favored a written application form (Tr. II, 215; Tr. IV, 154). After Ameritech expressed various positions on this topic, it did not agree to a written application process (including return envelopes with prepaid postage) for those without existing telephone service (Tr. II, 215, 217; Tr. III, 160-161; Tr. IV, 154-155; Empowerment Exs. 2C

⁵ A "warm transfer" in this context occurs when the representative transferred the USA caller to another department (collections, for example) and notifies that department that the caller is USA eligible.

at 2, 2H at 2, and 3A at 3; OCC Ex. 30, at 19-21). Ameritech believes that a written application is not a workable enrollment mechanism because, if the enrollee needed to be contacted, they could not be called because they had no telephone service (Tr. II, 216; Tr. III, 14). Moreover, Ameritech does not use a written application on any services provided (Tr. II, 216). Ameritech Michigan does, however, use a written application, with prepaid postage, for its low-income program (Edgemont Ex. 7).

Since August 30, 1996, anyone interested in the USA program speaks with the dedicated workgroup established by Ameritech (Ameritech Ex. 1, at 3).⁶ The potential participant is either transferred to the dedicated workgroup by Ameritech customer care center⁷ (CCC) representatives or calls the dedicated workgroup directly through the 800 numbers established concurrently with the dedicated workgroup (Ameritech Ex. 1, at 3-4; Ameritech Ex. 2, at 8; Tr. I, 18-19, 48, 70, 148, 153, 188). The dedicated workgroup has no marketing or sales functions and, thus, no incentive to enroll or not enroll people in the USA program (Ameritech Ex. 2, at 3; Tr. I, 147, 208). The dedicated work group is responsible for obtaining the necessary information to determine if a potential enrollee is qualified and to enroll the person in the program, subject to Ameritech's receipt of a document affirming that the person is participating in one of the eligible programs (Tr. I, 47, 101-102; Ameritech Ex. 2, at 3).⁸ Although the dedicated work group can enroll someone in the USA program, Ameritech is responsible for actually establishing telephone service for USA enrollees who do not have telephone service and for working out payment arrangements if there is a past due balance (Ameritech Ex. 1, at 3; Tr. I, 90-91, 142; Tr. II, 12; Tr. V, 31-32).⁹ The dedicated workgroup must transfer enrollees that it learns have past due bills to the CCC, who will forward the enrollee to the appropriate Ameritech collection center (Ameritech Ex. 1, at 3; OCC Ex. 15; Tr. I, 48-50, 99; OCC Ex. 30, at 22). Transfers from the dedicated workgroup are "warm" (Tr. I, 108, 143). Thus, participants are transferred to and from CCC representatives, depending upon the particular situation involved.

⁶ The dedicated workgroup has, for the most part, been an outside vendor, Consolidated Market Research (Tr. I, 68, 144; Ameritech Ex. 2, at 2, 4).

⁷ The customer care centers are the offices where residential customers call to discuss Ameritech's services (Ameritech Ex. 1, at 2). There are no offices in Ohio where a potential customer can go to sign up for services; they must call in (Tr. I, 137).

⁸ Originally, the documentation had to specifically demonstrate enrollment in one of the underlying, eligible programs (Ameritech Ex. 2, at 4). Ameritech would not supply an addressed envelope for the submission of that information (Tr. IV, 81). Eventually, Ameritech agreed to supply self-addressed envelopes, but not postage (*Id.*). Starting in January 1998, Ameritech began to accept, via mail or fax, self-verification from USA participants, namely, an affirmation from the participant that he/she is participating in one of the underlying, eligible programs (*Id.*; Tr. I, 151; OCC Ex. 30, at 33). Ameritech changed this procedure to make it easier for the participants (Tr. I, 151-152). The suggestion was first made by the Advisory Committee in late 1996 (Empowerment Ex. 3C at 2; Tr. III, 15; OCC Ex. 30, at 23-24).

⁹ For some of the Advisory Committee members, this was a surprise; they had expected that the dedicated workgroup would handle enrollment, service establishment, and payment arrangements (Tr. V, 53).

There is a script for the dedicated workgroup (Ameritech Ex. 2, at 3; OCC Ex. 2; Tr. I, 106, 134). Ameritech provided the training materials for the dedicated workgroup and calls were monitored by Ameritech to ensure quality (Ameritech Ex. 2, at 5; OCC Ex. 3; Tr. I, 194, 197). Regular performance reports are compiled too (Ameritech Ex. 2, at 5; Tr. I, 110, 136; Tr. II, 18; Tr. V, 48; Edgemont Exs. 10-12).¹⁰ The Advisory Committee reviewed the scripts used by the dedicated work group and the procedure followed by the dedicated work group (Ameritech Ex. 2, at 7). In the first month, however, problems occurred with transfers between the dedicated workgroup and the CCC and Ameritech investigated them and resolved them (Ameritech Ex. 2, at 5; OCC Ex. 10; Tr. I, 119, 179-180, 198-199; Tr. II, 19). Later, the Advisory Committee members were allowed to monitor calls (Ameritech Ex. 2, at 7). The Advisory Committee members found the calls handled fairly well (Tr. IV, 68; OCC Ex. 30, at 18).

In October 1996, the time between the call of a potential enrollee and actual enrollment was six to eight weeks, although the credits were applied retroactively to the sign-up date (Empowerment Ex. 3C, at 2; Tr. III, 10; Tr. V, 34; OCC Ex. 30, at 24). In April/May 1997, the time between the call and actual enrollment may have been three to four weeks (Tr. IV, 41). The Advisory Committee became concerned with the delay period and the number of callers electing one of the USA plans versus the actual enrollment numbers (Tr. III, 110-111). The Advisory Committee suggested that Ameritech consider alternative ways of verifying eligibility and, thus, shorten and streamline the enrollment process (OCC Ex. 30, at 24).

It is possible for the CCC representatives to sell additional services to USA enrollees (Tr. I, 20). The CCC representatives receive incentive paychecks for sales beyond established levels, but they are not required to meet sales benchmarks (Tr. I, 21-22, 26, 37-38, 56, 77-83; OCC Ex. 1). The incentive plan includes an incentive relating to USA, although it did not include an incentive when the USA program was started (Tr. IV, 79, 169; Empowerment Ex. 3J at Attach. 3). Mr. Norris, the general manager for the CCCs since April 1997, acknowledged that some complaints have been received concerning the performance of individual CCC representatives related to USA customers, but he was not aware of any since April 1997 (Ameritech Ex. 1, at 6-7; Tr. I, 99). Mr. Norris was unaware of any issues regarding CCC representatives not wanting to talk to USA plan 1 participants because those participants are not eligible to subscribe to other services (Tr. I, 40). At least between September 1996 and March 1997, this did occur because some CCC representatives wanted to sell certain optional services for which the representatives can receive higher incentive pay, but the USA plan 1 participants are not eligible for such optional services (OCC Exs. 12-14, 16, 18; Tr. I, 183-184). Also, CCC representatives have refused calls from the dedicated workgroup when the computer system was slow or "down" (OCC Ex. 17).

¹⁰ While the performance reports now indicate why many USA participants drop off the USA program, the Advisory Committee is not satisfied because a large number is still unaccounted (Tr. IV, 101). The Advisory Committee is still concerned with the overall "drop off" rate as well (Empowerment Exs. 4D at 2, 4H at 2).

personnel documented an ongoing problem with understanding the types of underlying, qualifying programs (Tr. III, 93; OCC Ex. 28).

Ameritech was concerned with having a sufficient number of personnel too. For instance, Ameritech contended that it would have to hire additional personnel in order to handle mail-in applications and, for that reason, would not offer written applications (OCC Ex. 30, at 14). As noted above, in October 1996, Ameritech agreed to advertise the program through fliers mailed to 60,000 beneficiaries of ODHS-administered programs.¹¹ Ameritech had expected a three-percent response, but the mailing generated a 25 percent response (OCC Ex. 4; Tr. I, 160-162). Ameritech's outside vendor was able to handle the unanticipated call volume, but encountered problems in accessing the CCC representatives (OCC Ex. 4). In fact, approximately 70 to 80 percent of the customers who call the dedicated workgroup are later transferred to the CCC (OCC Ex. 6; Ameritech Ex. 8). Ameritech's CCC was overwhelmed by the additional calls from the dedicated workgroup (OCC Ex. 6, at 2; OCC Ex. 30, at 14). Moreover, the response to the first mailing appeared to exhaust Ameritech's internal, departmental budgets (OCC Ex. 20). Because of the difficulties associated with the publicity effort in October 1996, Ameritech pursued staggered mailings, instead of changes in its staffing to handle one bulk mailing (OCC Ex. 4; Tr. I, 163; Ameritech Ex. 5, at 12). Because it was not feasible for ODHS to separately identify those who previously received mailings, it was decided that the mailings would build upon each other so that eventually all persons in the ODHS-administered programs would receive the USA publicity (Tr. I, 165; Tr. II, 140, 232; Tr. III, 133-134; Ameritech Ex. 5, at 12-13). However, depending upon how long an aid recipient was on a particular program, the recipient may or may not have received the USA flier (Tr. II, 234-235).

The second ODHS mailing occurred in November 1996 (which would have started the built-upon mailings) and was expected to generate approximately the same number of calls as the October 1996 mailing (OCC Ex. 7). However, in the first days of December 1996, the response was substantially more than anticipated (*Id.*). Again, the dedicated workgroup encountered problems in accessing the CCC and the CCC was overwhelmed (*Id.*). Ameritech personnel then suggested canceling the third mailing (scheduled for December 1996) because of the volume and difficulty of handling the responses to the prior mailings (*Id.*; Tr. I, 169). Again in April 1997, Ameritech personnel stated that future, planned mailings should be scaled back or delayed because of staffing concerns for the CCC and the dedicated workgroup as well (OCC Ex. 8; Tr. I, 173-174). Finally, in July 1997, concerns were raised again for establishing the necessary personnel in response to upcoming ODHS mailings (Tr. I, 176).

Ameritech personnel internally suggested several other means of being able to handle USA participants: (1) an interactive voice response program in order to accommodate the volume of calls; (2) a recording about the program after which the

¹¹ ODHS administers many of the programs that qualify someone for the USA program (Tr. I, 162-163). Some of the mailings, however, would be sent to individuals who were not located in Ameritech's service territory (*Id.*).